Supreme Court, U.S.
FILED

No. 01- 01 894 DEC 18 2001

OFFICE OF THE CLERK

In the Supreme Court of the United States

October Term, 2001

Evan S. Gutman,
Petitioner

v.

Loretta Gutman Francis,
Respondent

On Petition for a Writ of Certiorari
to the Supreme Court of the State of Oregon

PETITION FOR A WRIT OF CERTIORARI

Evan S. Gutman
Petitioner, Pro Se
Member District of Columbia Bar
Member State Bar of Pennsylvania
35 Short Hills Circle, Apt. 2A
Millburn, NJ 07041
(973) 258-1940

15pp

QUESTION PRESENTED

Does the existence of the Oregon State Bar Professional Liability Fund (PLF) unconstitutionally infringe on a litigant's Fourteenth Amendment Due Process rights to a fair and impartial adjudication?

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Cases: Pages

Tumey v Ohio,
273 U.S. 510 (1927) 2

Constitutional and Statutory Provisions:

Fourteenth Amendment to the U.S. Constitution
ORS 9.080

RULE 29.4(c) NOTICE

28 U.S.C. 2403(b) may apply as this proceeding calls into question the constitutionality of ORS 9.080. The Attorney General for the State of Oregon has been served with three copies of this Petition.

JURISDICTION

The Supreme Court of Oregon Dismissed Petitioner's Motion for Declaratory Judgment and denied his Petition for Reconsideration of a Petition for Review, on November 27, 2001 (App-1). The jurisdiction of this Court is invoked under 28 USC 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the Constitution provides: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law . . ."

ORS 9.080 the enabling statute for the PLF.

STATEMENT OF THE CASE

A. GENERAL SUMMARY

The fundamental question in this case is whether a State Bar violates the constitutional right of a litigant to an impartial adjudication by requiring its' attorneys to purchase malpractice coverage from the State Bar under threat of having their law license suspended.

In 1999, Respondent instituted Contempt proceedings against Petitioner for failure to make a $ 125 monthly payment on an attorney fees judgment. Petitioner in response challenged the constitutionality of the Oregon State Bar Professional Liability Fund (PLF) in two Motions, which were denied. Petitioner appealed on the ground the PLF is unconstitutional

because it causes judicial rulings to be predicated on the best financial interests of the Oregon State Bar. The Court of Appeals in November, 2000 declined to rule on the merits allegedly because the trial court document being appealed was not labeled as a "Judgment." The State Supreme Court denied review.

While a Petition for Certiorari was pending before this Court, the Oregon Court of Appeals issued a document (App-3) that was simultaneously labeled as both an "Order" signed August 1, 2001 and also a "Judgment" effective September 25, 2001. This Court then denied Certiorari. Petitioner timely filed a new Petition for Review with the Oregon Supreme Court on October 18, 2001 and also a Motion for Declaratory Judgment to declare the PLF unconstitutional. The State Supreme Court Records Clerk single-handedly rendered a Judicial Decision that the Petition could not be considered by the Court, falsely alleging that it was filed late (App-2). Petitioner then filed a Petition for Reconsideration on November 2, 2001 asserting that he was entitled to a ruling on whether his Petition should be Granted or Denied by the State Supreme Court. On November 27, 2001 the Petition for Reconsideration was denied and Motion for Declaratory Judgment Dismissed (App-1). Petitioner now files a Petition for Certiorari with this Court seeking review of the Motion for Declaratory Judgment, Dismissal of which deprived him of a fair and impartial adjudication on the Petition for Reconsideration and the Petition for Review.

The Oregon State Bar PLF creates an undue economic influence, in violation of the Fourteenth Amendment and Tumey v Ohio, 273 U.S. 510 (1927) that causes judicial rulings to be based on the best financial interests of the Oregon State Bar, rather than the law, facts and evidence.

B. ARGUMENT

The PLF requires Oregon attorneys under threat of suspension of their law license to purchase malpractice coverage directly from the State Bar. The same State Bar is vested with the disciplinary function, resulting in an atrocious conflict of interest. It was created in 1977, pursuant to ORS 9.080, which states:

> "The board shall have the authority to require all active members of the state bar . . . to carry professional liability insurance and . . . to do whatever is necessary and convenient to implement this provision, including the authority to own, organize and sponsor any insurance organization . . . and to establish a lawyer's professional liability fund. . . ."

The crux of Petitioner's Due Process challenge is that provision of malpractice coverage by the State Bar conflicts with the disciplinary function thereby creating unconstitutional economic incentives to predicate Judicial Rulings on financial interests of the State Bar, rather than the law, facts and evidence. Litigants are therefore deprived of fair and impartial adjudications.

Petitioner's right to an impartial adjudication was unconstitutionally infringed because the PLF diminished the likelihood of finding an Oregon attorney who would zealously represent him. Any Oregon attorney who zealously represented him would jeopardize State Bar financial interests, thereby placing their own status before the Bar at risk.

The PLF unconstitutionally infringes on a litigant's ability to obtain an impartial adjudication by placing an inordinate burden on the Oregon attorney. This occurs because the PLF creates an environment

that penalizes Oregon attorneys for providing zealous representation. Providing zealous representation increases the likelihood opposing counsel will be sued for malpractice. The few zealous Oregon attorneys that exist are placed in a situation where by providing zealous representation they jeopardize State Bar interests. The State Bar has the perfect means at its' disposal to get even with such an attorney, by subjecting them to unwarranted discipline. Similarly, the PLF creates economic incentives to reward attorneys who protect State Bar financial interests by treating them lenient in the disciplinary context. The result is discipline for ethical, zealous representation, and an absence of discipline for unethical conduct.

The burden placed on Oregon attorneys unconstitutionally infringes the litigant's right to an impartial adjudication by creating economic incentives for judicial rulings to be predicated on whether a litigant's counsel protects State Bar financial interests by failing to provide zealous representation, or whether such counsel is a potential financial cost to the Bar by providing zealous representation. If the Court is faced with two Oregon attorneys on opposing sides of a case, both of whom protect State Bar financial interests, a unique situation occurs. There exists potential for the issue to be decided on the merits.

The PLF unconstitutionally infringes on a Pro Se litigant's ability to receive an impartial adjudication most acutely, by creating an irrational bias within the Judiciary against Pro Se litigants. Petitioner therefore had an unconstitutionally diminished likelihood of receiving a fair adjudication by exercising his right of self-representation. Competent Pro Se litigants represent an economic threat because they will file motions delineating procedural defects in pleadings of opposing counsel without hesitation. Such motions if

granted result in opposing counsel being potentially liable for malpractice. Only in Oregon, does this cause State Bar financial interests to be jeopardized, since the Bar provides malpractice coverage. This creates acute economic incentives to deny meritworthy Pro Se motions by falsely characterizing them as meritless.

The Petitioner's case exemplifies how the PLF has destroyed the legitimacy of trial court and appellate review processes in Oregon. The trial court falsely represented a "Judgment" was entered, then issued only an "Order, and then refused to send a copy of the "Order" to Petitioner. The Court of Appeals declined to rule on the merits allegedly because the document being appealed was not labeled a "Judgment." Nine months later, it then issued its' own "Judgment," at which point the State Supreme Court Records Clerk asserted the time period for seeking review began to run when the Appellate "Order" was entered. The entire process of adjudication in Oregon has been nothing more than a complete Sham. **If a litigant seeks review of an "Order," the Court asserts a "Judgment" is required, and if the litigant waits to receive a "Judgment," the Court asserts the "Order" should have been appealed.** It is a total evasion of the review process predicated on utilization of amateurish, deceptive tactics by Oregon Justices. Any rational person knows the appellate process should hinge on more than tactical document labeling. Neither a law license or any legal training is required to realize such.

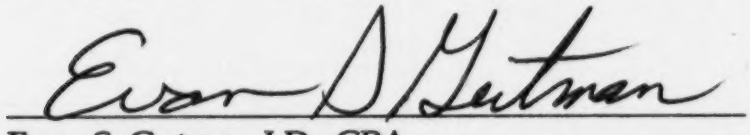
REASON FOR GRANTING THE WRIT

Pursuant to Rule 10(c) of this court, a state court of last resort has decided an important question of

federal law that has not been, but should be settled by this court. The Oregon Supreme Court decided the Oregon State Bar is allowed to "violate" the general public's trust. It is now clear that with the notable exception of the **Brave and Courageous Justice Paul De Muniz, who has been Valiantly declining to review most criminal convictions for months now as a form of Protest, the Oregon Supreme Court itself can no longer be trusted.** It has lost support from the Media, Federal Government, Legislators and General Public.

Petitioner believes this Court denied his first Petition for Certiorari because the Court of Appeals had not issued a "Judgment." They have now done so, albeit only to try to escape review by this Court. Petitioner continues to maintain Complete, Total, Absolute, Unswerving Faith and Confidence in this Court and simply refuses to believe this Court will give approval to a State Bar that has confessed to having "violated" the public's trust (App-4). If however, having "**violated**" the general public's trust is determined to be amenable to this Court (**which Petitioner definitely does not currently believe**), then Petitioner concedes there would be no place in the legal profession for him, and he would resign from the Bar.

Petitioner requests the Writ of Certiorari be granted.
Submitted this 10th day of December, 2001.



Evan S. Gutman J.D., CPA
Petitioner Pro Se
35 Short Hills Circle, Apt. 2A
Millburn, NJ 07041
973-258-1940

IN THE SUPREME COURT OF THE STATE OF OREGON

n the Matter of the Marriage of	)
	) Marion County Circuit
EVAN S. GUTMAN	) Court No. 93C-32566
	)
Petitioner-Appellant	) CA A109119
	)
and	) **ORDER DISMISSING MOTION FOR**
	) **DECLARATORY JUDGMENT AND**
LORETTA GUTMAN, aka Loretta	) **DENYING PETITION FOR**
Gutman Francis, aka Loretta	) **RECONSIDERATION**
Jane Francis	)
Respondent-Respondent	)

Upon consideration by the court.

Appellant's motion for declaratory judgment is dismissed. Appellant's petition for reconsideration is denied.

DATED this 27th day of November, 2001.

/S/ WALLACE P. CARSON JR.
WALLACE P. CARSON JR.
CHIEF JUSTICE

c: Evan S. Gutman
William Francis

112601sc,p3

SUPREME COURT **COURT OF APPEALS**

Kingsley W. Click
State Court Administrator

SUPREME COURT BUILDING
1163 STATE STREET
SALEM, OREGON 97301-2563

Records Section
503-986-5555
Fax 503-986-5560
TTY 503-986-5561

October 23, 2001

Evan S. Gutman
35 Short Hills Circle, Apt. 2A
Millburn, NJ 07041

RE: *Gutman and Gutman*
Court of Appeals Case No. A109119; Marion County Circuit Court Case No. 93C32566

Dear Mr. Gutman:

On October 22, 2001, the State Court Administrator received your petition for review to the Oregon Supreme Court. Your petition for review prays for review of an order of the Court of Appeals dated August 1, 2001.

A timely petition for review under Rule 9.05(1) of the Oregon Rules of Appellate Procedure (ORAP) was due to be served and filed on or before September 5, 2001. No petition was filed and in due course the appellate judgment was issued by the State Court Administrator on September 25, 2001 and the appeal was closed.

The Oregon Supreme Court cannot consider your petition for review without leave to do so. It has been received forty-three (43) days late. A Motion for Declaratory Judgment was received on October 22, 2001 by the State Court Administrator. The motion will be considered by the Oregon Supreme Court after opposing counsel may file an answer under Rule 7.05(3) of the ORAP.

Sincerely,

/s/ John Koskela

John Koskela
Records Section
503.986.5546

c: William Francis

IN THE COURT OF APPEALS OF THE STATE OF OREGON

n the Matter of the Marriage of	)	Marion County Circuit
	)	Court No. 93C-32566
EVAN S. GUTMAN	)	
	)	
Petitioner-Appellant,	)	
	)	
and	)	CA A109119
	)	
LORETTA GUTMAN, aka Loretta Gutman Francis, aka Loretta Jane Francis	)	
	)	
Respondent-Respondent	)	**ORDER OF DISMISSAL**

On November 30, 2000, the court issued an order giving leave to the trial court to enter a judgment. Appellant was to file an amended notice of appeal after entry of the judgment or the appeal would be dismissed for lack of prosecution. It appears from the trial court register that appellant has made no effort to cause the trial court to enter a judgment. Therefore, the appeal is dismissed for lack of prosecution.

Appeal dismissed.

AUG - 1 2001 /s/ Mary J. Deits

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Respondent
[X] No costs allowed.

Appellate Judgment
Effective Date: September 25, 2001

COURT OF APPEALS
(seal)

APPELLATE JUDGMENT

Bar apologizes for being "just plain wrong"

By Larry Rew and Edwin Harnden

Over the past two weeks the Oregonian has given extensive coverage to a 1994 malpractice claim handled by the Professional Liability Fund (PLF) of the Oregon State Bar. The PLF is the malpractice insurance carrier for most Oregon lawyers in private practice. The claim at the center of the news coverage involved a strategy employed by the PLF in defending a claim. Essentially, the PLF established a shell company and secretly bought some outstanding debt owed by the plaintiffs in the malpractice claim. They used this shell company to try to force a settlement.

Oregonian reporter Jeff Manning did an excellent job of reporting this very complex case last Sunday. Columnist Steve Duin followed up on Tuesday with a column that was intensely critical of the bar and the fund, as was the lead editorial on Wednesday's editorial page.

The *Oregonian* got it right. While the "judgment acquisition" strategy does not violate any laws or legal ethics rules, it is still just plain wrong. It was wrong to use it then, and we will never use it again.

As leaders of the state bar, we accept full responsibility for the decision-making that transpired several years ago. The liability fund does have a separate board and director, but its operations are ultimately the responsibility of the state bar. We have two apologies to make: one to the public and one to our members.

To the public: It is our professional responsibility to maintain the integrity of Oregon's legal system. If you cannot trust your legal community, then you will never believe you have full access to your justice system.

To Oregon's lawyers: We have heard you loud and clear. You are justifiably outraged at our conduct. Unfortunately, you are paying the price financially and more important, with regard to the damage done to the reputation of lawyers everywhere.

The state bar has violated your trust. We are sorry.

While the intense scrutiny of this case is new to the public and to many of our members, it is not new to us. We addressed it in detail several years ago, when disciplinary complaints were first filed against several lawyers involved in the malpractice claim. The bar's Board of Governors addressed the issue again in a meeting last weekend and will meet jointly today with the PLF's board.

We have taken numerous actions. First, several years ago we made it a matter of policy that this secret judgment acquisition strategy would never again be used. Second, we have re-examined our organization's values, which include integrity, fairness, and respect for the rule of law, and made it a policy that our Board of Governors review all types of strategies used by the PLF to ensure that they are aligned with those values. Third, we have increased our oversight of PLF operations, and are confident that what happened four years ago would not happen today. Finally, the PLF Board itself has committed to a closer monitoring of its defense attorneys.

It is particularly unfortunate that this incident has clouded what is a remarkable achievement: the lawyers of this state, and only this state, pay a substantial amount of money each year to provide a layer of coverage for legitimate claims of malpractice. The responsibility for the fact that those achievements are now of only passing notice rests squarely on the shoulders of the state bar membership.

This has been an ugly episode in the history of our organization. We are proud, however, of our membership for the collective voice we heard from them this week. Their criticism this week attests to the integrity with which they live, and the ideals to which they - and the public - hold us. We will do our very best to live up to those ideals in the future.

Larry Rew of Pendleton and Edwin Harnden of Portland are the President and President-elect of the Oregon State Bar.